

Decision **DRAFT DECISION OF ALJ O'DONNELL** (Mailed 2/4/2002)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of North County Tel-Comm, Inc., for  
a Certificate of Public Convenience and Necessity  
in Order to Provide Competitive Local Exchange  
and Non-Dominant Interexchange Service.

Application 00-05-044  
(Filed May 18, 2000)

**OPINION DISMISSING APPLICATION FOR FAILURE TO PROSECUTE****Summary**

North County Tel-Comm, Inc. (Applicant) filed this application for a certificate of public convenience and necessity (CPCN) under Pub. Util. Code § 1001 for authority to provide local exchange and interexchange telecommunications services. By this decision, we dismiss the application for failure to prosecute.

**Discussion**

Applicant filed its application on May 18, 2000, requesting authority to provide local exchange and interexchange telecommunications services. The application did not contain all of the information required for approval. On June 8, 2000, and again on January 17, 2001, the assigned administrative law judge (ALJ) faxed a request for additional information to Applicant's counsel. The ALJ received no response to the request. The ALJ made subsequent inquiries regarding the request, but was unable to get a response from Applicant. On December 3, 2001, the ALJ issued a ruling that required Applicant to indicate whether it wanted to pursue the application. Applicant was ordered to respond

by December 20, 2001. Applicant did not file a response. This application should not be left open indefinitely, as Applicant has been given a full opportunity to pursue this matter, and has not done so. Therefore, the application shall be dismissed for failure to prosecute. This order will be made effective immediately in order to clear this application from the Commission's list of active proceedings.

**Comments on Draft Decision**

The draft decision of ALJ O'Donnell in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Commission's Rules of Practice and Procedure.

**Request to File Under Seal**

Applicant requests that the financial information filed with this application be filed under seal. The financial information consists of financial statements, and Applicant's estimated first and fifth year customer bases. Applicant represents that the information is proprietary and sensitive. The information, if revealed, would place Applicant at an unfair business disadvantage. We have granted similar requests in the past and will do so here.

**Findings of Fact**

1. Applicant failed to respond to the ALJ's June 8, 2000, and January 17, 2001 requests for information.
2. Applicant failed to respond to the ALJ's December 3, 2001 ruling.
3. The application should not be left open indefinitely.
4. Applicant has failed to prosecute the application.
5. Public disclosure of Applicant's financial information would place it at an unfair business disadvantage.

**Conclusions of Law**

1. The application should be dismissed.
2. This order should be made effective immediately in order to clear this application from the Commission's list of active proceedings.
3. Applicant's request to file its financial information under seal should be granted for two years.

**O R D E R**

**IT IS ORDERED** that:

1. Application 00-05-044 is dismissed.
2. The applicant's request to have the financial information filed with this application kept under seal is granted for two years from the effective date of this decision. During that period the information shall not be made accessible or disclosed to anyone other than the Commission staff except on the further order or ruling of the Commission, the Assigned Commissioner, the assigned Administrative Law Judge (ALJ), or the ALJ then designated as Law and Motion Judge.
3. If the applicant believes that further protection of the information kept under seal is needed, it may file a motion stating the justification for further withholding of the information from public inspection, or for such other relief as the Commission rules may then provide. This motion shall be filed no later than one month before the expiration date.

4. This proceeding is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.